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BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			MENON, KRISHNAN S	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/786,042
Filing Date: February 26, 2004
Appellant(s): COTE ET AL.

MAILED
AUG 20 2007
GROUP 1700

James Raakman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/12/07 appealing from the Office action
mailed 1/18/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6951611 DANNENMAIER 10-2005

WO 00/44478, Dannenmaier, et al, 3 August 2000.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 20,29,30, 36 and 38-40 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/44478 (US equivalent used in the rejection: US 6,951,611 to Dannenmaier et al).

Dannenmaier teaches a header comprising a shell (47, figures 6 and 7), spaced-apart sidewalls (23, separated by the hinge (27) on one side and the potting conduit (55) on the other side), resin injection duct (55 with aperture 57 into the shell), the duct and the aperture plugged by the resin (column 9 lines 10-22), and a permeate collection cavity between the block of potting resin and the shell (47). The aperture is on the sidewall of the shell as claimed.

Advisory Action of 3/9/07:

Amendment will be entered because it reduces the number of issues on appeal. Upon entry, claims will be rejected as shown in the final rejection for claims 38 and 39.

Arguments regarding claims 38 and 39 are not persuasive. Claims recite a product having a structure. The reference teaches a product having a structure that reads on the claim; therefore, the reference anticipates the claims.

The structure in figure 7 of the Dannenmaier reference shows a "shell" (47) which has extended sidewalls defined by (23) in figure 6, which after assembly would be (27) in figure 7. The shell 47 with its sidewall (27) are joined by welding (column 8 lines 45-48), thus making them integral in to one shell as in claim 38. The resin injection duct (53,57) passes through an opening (or bore) on the shell/sidewall, and is blocked by the resin block. The resin block is inside the shell (47), in an inside recess of the shell, with a permeate cavity formed between the permeate outlet (49) and the block within shell (47). The block has hollow fibers ending in it with their lumen open to the permeate cavity as claimed.

Applicant argument appears as if by "the broadest reasonable interpretation consistent with the specification (MPEP 2111)" [underline in applicant's argument] the claims should be interpreted based on matter exactly as presented in the specification, which is not correct.

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

In the present case, the claim is interpreted to the structural elements in relationship with one-another, and there is a one-to-one correspondence of the recited

Art Unit: 1723

structural elements and there relationship as claimed to the structure presented in the particular embodiment of the reference. The claims are for a finished product.

Applicant's implication that the structure of the reference does not look like the structure presented in applicant's specification is not persuasive to overcome the rejection. Argument that the body that looks like the potting recess, which is cut after potting, and then a hollow cap attached, etc., are beyond the scope of the rejection, because they are all process steps. The finished structure in figure 7 reads on the claims. The housing (23) of figure 6 together with the end-cap (47) of figure 7 together as one unitary piece (they are welded or otherwise joined) form the "shell" as claimed, having the recess and the permeate cavity.

(10) Response to Argument

Arguments about Claim 38:

Elements of Claim 38 are:

(1) A header having a shell with a potting recess inside: the header shell is as marked in the figure above, and is constituted by the housing comprising the end cap (47) and the shells (21,23). End cap (47) is welded to the shell (21,23), thus forming an integral piece (see column 8, lines 38-53). Potting recess is inside the end cap (47).

Appellant's claim is for a finished product; figure 7 of the reference teaches a finished product.

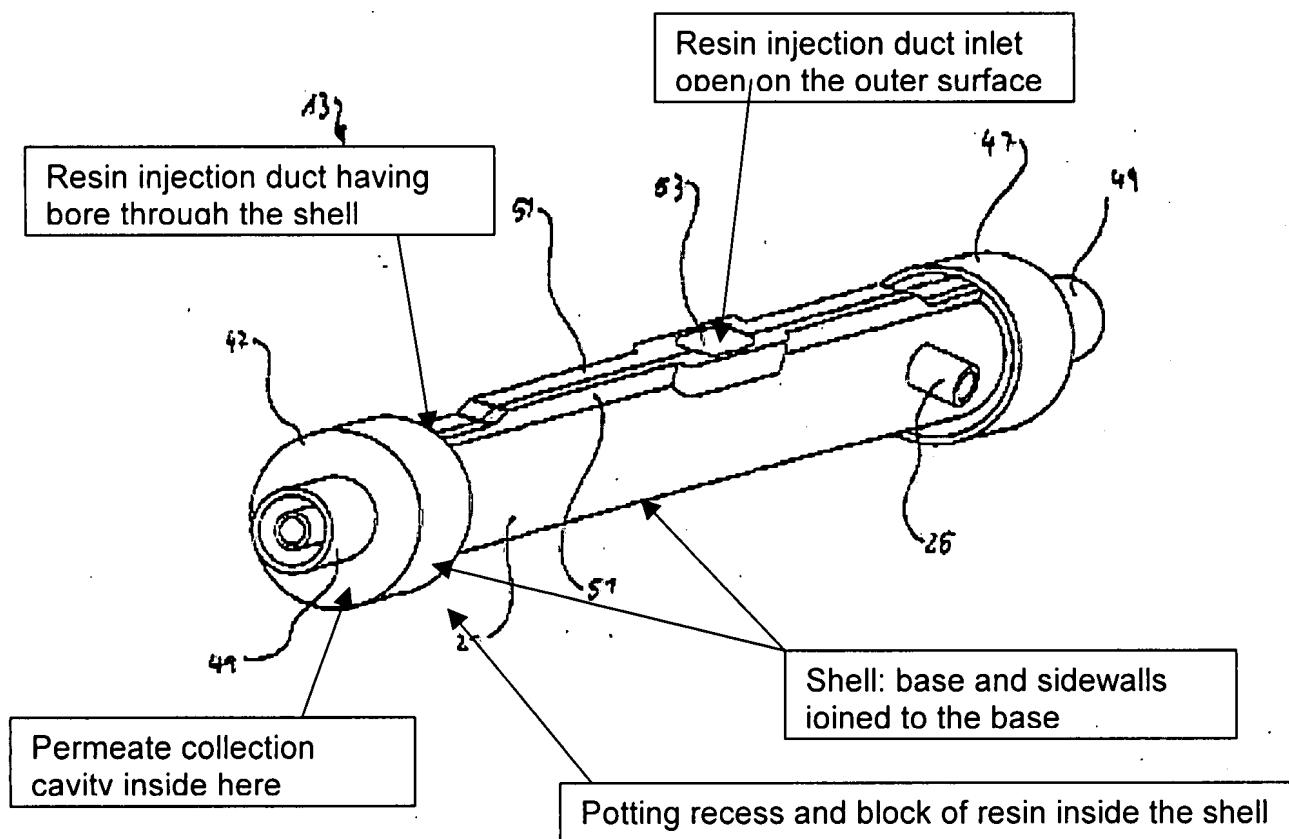


Figure: Figure 7 of the Reference marked up with elements from claim 38.

(2) A block of resin in the potting recess: this is inside the end cap (47).

(3) A resin injection duct (55) extending between the outer surface of the shell and the potting recess – this is marked in the figure above. The resin injection duct passes through the shell and has a bore (57) through the shell.

Art Unit: 1723

(4) Permeate collection cavity – this cavity is also inside the end cap of the housing at location as shown in the figure above. The lumen of the hollow fibers are in communication with the permeate cavity as recited. Hollow fibers extend between the two blocks of resin at each end of the housing and terminate at the permeate collection cavities at the ends. See column 8, line 1 – column 9, line 32.

Appellant argues that:

- (1) the reference failed to teach a header for a water treatment module: "Water treatment" is only intended use.
- (2) It failed to disclose a permeate collection cavity ... as claimed: this is clearly shown above.
- (3) Appellant relates the claimed subject matter, ie., the shell of the header, to just the end cap (47) of Dannenmaier. The examiner believes that there is nothing in the claim language that limits the shell of the header to just the end cap of Dannenmaier.
- (4) The argument in the paragraph linking of pages 5 and 6 of the brief is not commensurate in scope with the claims and the rejection. The rejection does not say or imply that there is no outer casing at the axially central portion in figure 7, nor it ignores the potting inlet 53 or channel 55.
- (5) the arguments in section marked (ii) at page 6 of the brief is based on the process of assembling the hollow fiber housing (13) of Dannenmaier, which is also not commensurate in scope with the claim or the rejection. Appellant's claims are for a finished product; figure 7 of the reference teaches a finished product.

Appellant argues with a detailed explanation of the process of potting in Dannenmaier to make the housing (13), that the resin inlet port (57) as defined by Dannenmaier would be removed from the finished product of figure 7, and thus the "bore through the shell" limitation of claim 38 would be absent in figure 7. This is not true for several reasons.

The entire argument to show that the port 57 would be absent is improper, because there is no basis in the reference that it would be absent. The ends are trimmed to open up the lumen of the hollow fibers to the permeate collection channel, but the reference does not say that the location of trimming need be as argued; it may be at a point beyond outlet 57 in figure 6. There is reason to believe that it is in fact beyond outlet 57: see figure 1 and column 5, lines 25-33: the hollow fibers are severed after winding, between the housings (13). Thus, there is an overhang of the hollow fibers beyond the housing, and only the hollow fibers need be trimmed to open their ends.

Even if Appellant's argument were true, that the outlet 57 is cut from the housing after potting, the reference would still read on the claim. As can be seen in figure 7, there is a bore formed through the shell as claimed, because at the junction of the end cap (47) and the housing shells (21,23), a bore is formed by the resin injection duct, and this bore is filled with potting compound. Even if the outlet 57 is trimmed, the bore would still have an outlet at the point where it is trimmed. Thus the outlet of the resin injection duct is filled with resin – in fact the entire resign injection duct (53,55,57) is filled with resin. In addition, there is no discontinuity of the cured resin between the

Art Unit: 1723

resin block and the resin in the injection duct of the reference because the resin injection duct is formed by adjoining two halves of the housing shell (21 and 23), and the resin seals the joint along the entire length of the shells (21, 23) including the portion where the resin block is.

Thus, claim 38 is anticipated by the reference.

Arguments about Claim 39:

Claim 39 has the added limitation of the shell having spaced-apart sidewalls joined to the base. In figure 7, the end cap is the 'base'. Spaced-apart sidewalls are formed by parts (21) and (23). They are spaced apart by the hinge (27) on one side and the resin joint at the resin injection duct on the other. The resin injection duct is passing through the shell in figure 7. Thus all the limitations of claim 39 is also present in the reference.

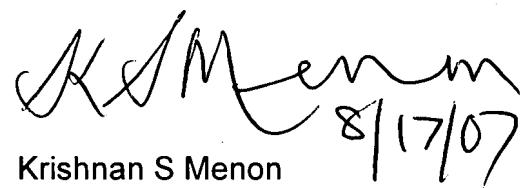
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 1723

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



K S Menon
8/17/07

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Primary Examiner
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